

Memorandum

Date : May 1,
2002
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To : William J. Keese, Chairman and Presiding Member
Robert Pernell, Commissioner and Associate Member

From : California Energy Commission - Cheri Davis
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Subject : EAST ALTAMONT ENERGY CENTER STATUS REPORT #5 – May,
2002

Energy Commission staff has prepared this Status Report to provide the Committee with an update on staff's efforts to resolve outstanding issues associated with the East Altamont Energy Center (EAEC) project.

KEY EVENTS SINCE THE LAST STATUS REPORT

- Energy Commission and Western Area Power Administration (Western) staff held a joint workshop on January 22, 2002 in Tracy to discuss the concerns for landscaping of the proposed project with respect to visual and biological resources.
- Staff completed and filed staff's visible plume modeling results as a supplement to the Preliminary Staff Assessment (PSA) /Preliminary Environmental Assessment (EA).
- Staff issued three sets of data requests, covering the topics of biological resources, cultural resources, hazardous materials, noise, and transmission system engineering. The applicant filed objections to staff's questions concerning noise and transmission system engineering.
- Staff has been in contact with relevant agencies to resolve outstanding issues, including Alameda County Planning and Public Works Departments, the Department of Water Resources, National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bay Area Air Quality Management District.

SCHEDULE

In the last several months, staff has been able to complete its final analysis for a number of subject areas; however, there are still a number of subject areas for which there is outstanding information or that would benefit from further resolution, as summarized in the following table:

Technical Discipline	Outstanding items or tasks and timeframe, if available
Air Quality	<ul style="list-style-type: none"> • FDOC* – Late May • Workshop on local PM10 mitigation options – Staff would like to hold this in May
Biological Resources	<ul style="list-style-type: none"> • Designation by applicant of specific land parcel to be purchased for mitigation – expected May 17* • Assurance from USFWS and CDFG that all biological mitigation proposed by applicant is acceptable*
Hazardous Materials	<ul style="list-style-type: none"> • Transportation Risk Assessment from Applicant
Land Use	<ul style="list-style-type: none"> • Response from Alameda County regarding their interpretation of the East County Area Plan as amended by Measure D
Noise	<ul style="list-style-type: none"> • Noise abatement feasibility study from Applicant
Public Health	<ul style="list-style-type: none"> • Same as for air quality*
Transmission System	<ul style="list-style-type: none"> • Letter of Agreement between SMUD and the applicant*
Engineering	
Visual Resources	<ul style="list-style-type: none"> • Photo-simulation of reasonable worst case plume*

* These items are critical to staff's analysis. Without them, staff's final analysis would be incomplete.

Without receipt of the items identified in the table above and/or further resolution of other issues, staff will not be able to recommend approval of the project. Furthermore, there are a number of subject areas for which there will be substantially new conditions in the final staff document. Staff would prefer to be able to air these new recommendations at the workshop staff is proposing for the month of May, rather than have them appear in the final analysis for the first time. Such a workshop would likely cover the topics of air quality, hazardous materials, soil and water resources, and visual resources.

Staff cannot predict the amount of time that will be needed for parties to provide the needed information and for agencies to issue their determinations. For that reason, staff stands by its proposal to link the schedule for the final staff document to the receipt of the above-listed pieces of information (indicated with a “*”). Taking into consideration the amount of time necessary for analysis, the extended review period required for Western, and formatting and printing of the document, staff will need at least 62 calendar days¹ to complete the final staff document once all critical items are received and complete.

The applicant has proposed a bifurcated schedule for the final document. Bifurcation is not consistent with Western's requirements for issuing a document pursuant to NEPA. Furthermore, staff does not see how a bifurcation of the final document would in any way expedite the overall schedule. Staff is working to complete sections as it can, but proposes to release the final analysis as a single document.

¹ Consistent with the 45 working days that staff requested previously

UPDATE ON SIGNIFICANT ISSUES

Air Quality

Preliminary Determination of Compliance (PDOC). Originally expected in early November of 2001, the PDOC was delayed due in part to changes made by the applicant. The Bay Area Air Quality Management District (District) finally issued its PDOC April 12, 2002, and is currently undergoing a 30-day public review period. The late completion of the PDOC, which in turn delays the completion of the Final Determination of Compliance (FDOC), will cause significant delays to staff's final analysis. The District expects to release the FDOC on or about May 28, 2002.

SO₂ Emissions Estimates. As previously reported, staff has been concerned that the applicant underestimated the project's emissions of SO₂ due to an incorrect assumption about the sulfur content of their intended fuel. To address staff's concerns, the applicant submitted natural gas sulfur content data collected by PG&E at the company's Burney compressor station in late December. The data showed an annual average sulfur content of 0.28 grains per 100 standard cubic feet of natural gas, which is only slightly higher than the sulfur content assumed by the applicant for purposes of air quality modeling. To ensure that this level is maintained, staff is proposing a condition of certification that would require the applicant to provide, on a quarterly basis, the hourly sulfur content of the natural gas delivered to the facility.

Best Available Control Technology. Still unresolved is the matter of what constitutes Best Available Control Technology for the EAEC. The applicant has proposed to use selective catalytic reduction (SCR) and oxidation catalysts to minimize the emissions of oxides of nitrogen (NO_x) to 2.5 parts per million (ppm), and carbon monoxide (CO) to 6 ppm, while maintaining the slip of ammonia (NH₃) emissions to 10 ppm. However, the Federal Environmental Protection Agency (EPA) recently determined that BACT for a combustion turbine combined cycle operation should be set at 2 ppm for NO_x, 2 ppm for CO and 5 ppm for ammonia. Staff is still recommending that the project mitigate to the above-mentioned BACT levels, as it has on past projects, and awaits EPA's official comments on the PDOC.

Emission Reduction Credits (ERCs). The applicant proposes to purchase SO₂ credits, generated some distance away from the project and at a ratio of three to one, to offset the project's PM₁₀ emissions. While the PDOC indicates that this interpollutant offset ratio would satisfy the District's LORS, staff remains concerned about the ability of ERCs from so far away to mitigate local PM₁₀ impacts. Staff will be working with the applicant to set up a workshop sometime during the month of May to discuss options for mitigating PM₁₀ impacts.

Additionally, as previously reported, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) has expressed concern over the

sufficiency of the proposed offsets to mitigate impacts to the San Joaquin Valley. Staff has encouraged the SJVUAPCD to work with the BAAQMD and the applicant to resolve these concerns; however, according to the SJVUAPCD, the applicant has so far been unresponsive to their concerns. Staff will ensure that the SJVUAPCD is notified of staff's proposed workshop.

Biological Resources

Landscaping. The applicant submitted a new conceptual landscaping plan on April 3, 2002, to address the concerns discussed at the Visual and Biological Resources Issues Resolution Workshop held on January 22. As previously noted, the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS) have been opposed to the use of vegetation around the plant that would provide habitat for predators of the area's sensitive wildlife species. The revised landscaping plan employs the use of smaller tree species that are believed to be less attractive to raptors. Also, the revised plan positions the trees closer to the boundaries of the plant footprint, thereby reducing the amount of land that would be impacted by this vegetation. Staff is currently evaluating the revised landscaping plan and will consult with CDFG and USFWS for their input on the plan before completing the final analysis.

Impacts to Fisheries. The National Marine Fisheries Service (NMFS) has completed its section 7 consultation with Western. NMFS has concluded that there will be no impacts to listed species or to essential fish habitat from the use of cooling water, provided that the applicant implements the mitigation measures identified in the AFC, including the use of recycled water, as soon as possible.

Mitigation for Impacts to Biological Resources. Staff has been an observer during consultations between Western, the applicant, USFWS, and CDFG about different mitigation options for terrestrial impacts, namely land purchases. Staff as well as USFWS and CDFG representatives concur that either of the two properties under consideration look promising as mitigation for impacts to San Joaquin kit fox habitat. The one outstanding issue is whether the applicant will be able to purchase the mitigation property within the necessary timeframe.

Biological Opinion. Western prepared and forwarded the Biological Assessment (BA) to USFWS in early February. USFWS has put its review on hold until the applicant decides on the land parcel that they will purchase as mitigation for terrestrial biological impacts. While staff does not necessarily need to have the completed Biological Opinion before writing its final analysis, staff believes that the habitat mitigation issue must be resolved more completely with USFWS before completing the final staff analysis. To resolve this matter, a letter from USFWS is needed, indicating that the Biological Assessment is complete and the mitigation measures are acceptable.

Hazardous Materials

Staff understands that the applicant is preparing a revised transportation risk assessment that will be filed shortly. Staff will incorporate this new piece of information into the final analysis when it is received. Staff remains concerned about the use of anhydrous ammonia given the proximity of the Mountain House development, and is reluctant to recommend the use of anhydrous ammonia when a far less toxic and less risky substitute – aqueous ammonia – is readily available.

Land Use

In the PSA/Preliminary EA, staff discussed the conflicting interpretations of the East County Area Plan as modified by Measure D. Based on a meeting with Alameda County, staff concluded that, while Measure D contained language that could be interpreted as restricting uses such as a power plant, the County's interpretation was not unreasonable and thus it was appropriate for staff to defer to the County. At the PSA/Preliminary EA Workshop, a representative from Sierra Club and other members of the public who were involved with the drafting and passage of Measure D, disagreed with the County's interpretation of the language and the conclusion that the project is an allowed use.

On March 7, 2002, staff sent a formal letter to Alameda County requesting additional information about its interpretation of local LORS, but has received no response to date. Likewise, staff has nothing in writing from the Measure D advocates that disagreed with the County's interpretation of LORS. Although staff would prefer to have these views expressed in writing, staff is prepared to complete its analysis with the information that is currently available.

In staff's previous status report, staff reported that there were three outstanding items: the Certificate of Compliance, the farmland mitigation agreement, and Alameda County's proposed findings for a conditional use permit, which would be required but for the Energy Commission's jurisdiction. All three items have been received. Staff has evaluated and incorporated the County's findings and Certificate of Compliance into its determination of LORS compliance. Staff has reviewed the applicant's farmland mitigation agreement and is concerned that the agreement does not guarantee that the minimum amount of farmland necessary to mitigate the project's impact will be purchased. Staff is investigating with Alameda County the possibility of revising the mitigation agreement to address staff's concerns. In the absence of a revised agreement, staff will propose a Condition of Certification to ensure that impacts to farmland are adequately mitigated.

Noise

The applicant has stated that it may be possible to achieve an operational plant noise level of about 43 dBA at the nearest sensitive receptor, but has yet to demonstrate that a lower level is not feasible. Given typical

summertime ambient nighttime noise levels in the range of 34 dBA L90, a plant noise level of 43 dBA would result in an increase of 10 dBA over ambient noise levels during the quietest period of the night. Staff has concluded that the potential for a significant noise impact exists where the noise of the project plus the background noise exceeds the background noise level (L90) by more than 5 dBA at the nearest sensitive receptor. Therefore, the project as proposed will result in a significant adverse impact.

Staff's data requests dated March 27, 2002, requested a detailed analysis of the contributions of the individual sources to the overall noise levels, and of the noise control measures which are feasible for each, in order to determine the feasibility of additional noise abatement. The applicant objected to these data requests on the basis that staff had not definitively established the potential for significant impacts. The applicant has now submitted a partial response, but appears to have grossly underestimated the noise control benefits achievable with staff's proposed mitigation measures. Staff will need to evaluate the information at greater length.

Absent a more complete and credible response to staff's data requests, staff will propose a condition for noise mitigation at the power plant lower than the noise levels proposed by the applicant.

Soil and Water Resources

As presented in staff's PSA/Preliminary EA, staff has been concerned about the potential for significant adverse impacts as a result of the project relying on the Byron Bethany Irrigation District (BBID) to divert fresh water from the Delta during seasons and in quantities uncharacteristic of BBID's historic patterns of diversion. Staff's preliminary analysis reflected the concerns expressed by Department of Water Resources (DWR) and was consistent with California Water Code and the guidance of the State Water Resources Control Board.

The resolution of these water issues has been subject to negotiations between DWR and BBID which, as the parties reported at the January Scheduling Conference, would eliminate DWR's concerns for impacts resulting from fresh water supply to EAEC during early years of operation. Over the last several months, staff has been in frequent contact with DWR to check on the status of said negotiations. In a recent meeting with DWR and NMFS held on April 23, staff learned that the negotiations are still underway but appear very close to completion. DWR also expressed for the first time that, in anticipation of their agreement with BBID, and with the understanding that the applicant would implement the conservation measures described in the AFC, including the transition to recycled water as soon as possible, they would be willing to withhold further objections to the initial use of fresh water for this project.

In our last status report, staff discussed the possibility that the Mountain House Community Services District (MHCS D) could make greater amounts of recycled water available for use by the EAEC earlier than originally presented in the applicant's AFC. Specifically, representatives from MHCS D have offered the possibility for MHCS D to provide 100% of the EAEC's water needs by year 2015. Staff will address the opportunity for EAEC's maximum utilization of recycled water within the Conditions of Certification of the final staff analysis.

Transmission System Engineering

In early December, 2001, staff received an electronic copy of the Detailed Facility Interconnection Study (DFIS) conducted by Western and dated October 30, 2001. Because nothing was brought up by either Western or the applicant at the workshop in late December, staff had the expectation that the DFIS was consistent with the System Impact Study and that there were no new overloads. With careful analysis, however, staff found several project-related overload criteria violations not previously identified. Staff spoke with the applicant about these overload criteria violations and informally requested that the applicant provide letters of mitigation from the affected transmission owners. The applicant asked that staff provide formal data requests, which we did in Data Request set #6. In these data requests, staff asked for letters from SMUD, PG&E, and MID (if available), identifying the mitigation measures that would be necessary to address these overload criteria violations.

The applicant filed an objection to these data requests on the basis that the data requests fall into an area outside of the Energy Commission's jurisdiction. Staff disagrees with this assertion and believes that an evaluation of transmission line overloads falls within the Energy Commission's CEQA review and LORS conformance authority. Staff plans to file a formal response to applicant's objection shortly.

Because staff believes that resolving these overloads is crucial to its analysis, staff called the affected transmission owners – PG&E and SMUD – directly and requested mitigation letters. PG&E and SMUD complied with this request; these letters were provided to both staff and the applicant within a period of approximately one week, and the applicant docketed them on April 23, 2002. The letter from PG&E was sufficient; the letter from SMUD, however does not indicate what mitigation measures would be employed for this project. Staff therefore still needs a letter of agreement between the applicant and SMUD that provides details of the mitigation measures to be employed. Absent this letter, staff intends to file a motion to compel.

When staff has secured assurances from the affected transmission owners that transmission system impacts have been adequately mitigated, staff will complete its final analysis.

Visual Resources

Responding to specific concerns that were discussed at the workshop in January, the applicant submitted a revised landscaping plan and photo-simulations depicting the visual screening of the plant at 10 years and at 20 years. Staff is evaluating these submittals for effective mitigation of visual impacts.

When the Applicant submitted revised Heat Recovery Steam Generator exhaust parameters, staff was obligated to remodel the potential for plumes. Staff's modeling results were filed January 23, 2002 and the applicant provided comments April 3, 2002. In these comments, the applicant recommended the use of a different model for the cooling tower and provided results from their own revised modeling runs. Staff agreed to complete its own set of modeling runs with the applicant's recommended model, and these results will be made available shortly. If parties have no further comments on the modeling results, visual resources staff will request a photo-simulation of the reasonable worst case plume from the applicant and begin its analysis of potential visual impacts.

cc: East Altamont Proof of Service
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Jeff Miller, CAL-ISO
Victor Izzo, Central Valley RWQCB
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